

1
2
3
4
5
6
7
8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11

12 EUGENE D. RUTLEDGE, F-79385,)
13 Plaintiff(s),) No. C 11-4330 CRB (PR)
14 vs.) ORDER OF DISMISSAL
15 A. ALLEN, Deputy Clerk, et al.,)
16 Defendant(s).)
17 _____)

18
19 Plaintiff, a prisoner at High Desert State Prison, has filed a pro se
20 complaint under 42 U.S.C. § 1983 seeking an order compelling deputy clerks of
21 the Supreme Court of California to file his petition for review in a civil case of
22 his against AC Transit. Plaintiff claims that the deputy clerks improperly have
23 rejected his petition as untimely under the California Rules of Court.

24 **DISCUSSION**

25 A. Standard of Review

26 Federal courts must engage in a preliminary screening of cases in which
27 prisoners seek redress from a governmental entity or officer or employee of a
28 governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune from such
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed. Balistreri
5 v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
7 elements: (1) that a right secured by the Constitution or laws of the United States
8 was violated, and (2) that the alleged violation was committed by a person acting
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 Plaintiff's action must be dismissed because it is well established that this
12 court is without power to direct state officials in the performance of their duties.

13 See Demos v. U.S. District Court, 925 F.2d 1160, 1161-62 (9th Cir. 1991).

14 Plaintiff's invocation of § 1983 makes no difference because his underlying
15 allegations – that the deputy clerks of the Supreme Court of California are
16 misapplying California law – simply do not amount to a violation of a right
17 secured by the Constitution or law of the United States. See West, 487 U.S. at
18 48.

19 **CONCLUSION**

20 For the foregoing reasons, the complaint is DISMISSED for failure to
21 state claim under the authority of 28 U.S.C. § 1915A(b).

22 The clerk shall enter judgment in accordance with this order, terminate all
23 pending motions as moot, and close the file.

24 SO ORDERED.

25 DATED: Feb. 22, 2012


CHARLES R. BREYER
United States District Judge

26 G:\PRO-SE\CRB\CR.11\Rutledge, E.11-4330.dismissal.wpd